(17,543.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 429.

FRED BARDES, TRUSTEE OF THE ESTATE OF FRANK T. WALKER, BANKRUPT, COMPLAINANT,

vs.

THE FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL.

ON A CERTIFICATE FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF IOWA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 24, 1899.

1 In United States District Court, Northern District of Iowa, Western Division.

FRED BARDES, Trustee of Estate of Frank T. Walker, Bankrupt,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA, ET AL. } In Equity.

Be it remembered that this case came up for hearing before the United States district court for the northern district of Iowa, western division, upon a bill of complaint in equity filed by Fred Bardes, trustee of the estate of Frank T. Walker, who had been adjudged to be a bankrupt upon his own petition, filed March 1, 1899, in this court, sitting in bankruptcy, in the western division of this district.

The defendants to the bill are The First National Bank of Hawarden, Iowa, a banking corporation created under the act of Congress commonly known as the national banking act, its place of business being at Hawarden, Sioux county, Iowa; also Frederick E. Watkins, J. A. Moody, A. Melrose, and L. K. Williams, citizens of the State of South Dakota, and Charles R. Allen, a citizen of Iowa, residing at Hawarden, and the general purpose of the bill is to secure a decree setting aside a transfer of a stock of goods by the bankrupt to the defendants, and to compel the defendants to account for the goods or their proceeds, on the ground that the transfer was in fraud of the provisions of the bankrupt act and in fraud of the creditors of the bankrupt, it being averred that the stock of goods so transferred by the bankrupt was of the value of thirty-five
2 hundred dollars.

To this bill the defendants interposed a demurrer on the ground that this court could not take jurisdiction of the case, it being a suit brought by the trustee against third parties, and as the bankrupt could not have sued the defendants in this court if the proceedings in bankruptcy had not been instituted, therefore the court cannot entertain jurisdiction of the action brought by the trustee, and the question of the jurisdiction of the court having been thus put in issue, and this court desiring to obtain the opinion and instruction of the Supreme Court of the United States for its guidance in the premises, hereby certifies to the Supreme Court for its consideration and determination the following questions:

1st. Do the provisions of the second clause of section 23 of the act of Congress, known as the bankrupt act of 1898, control and limit the jurisdiction of all courts, including the several district courts of the United States, over suits brought by trustees in bankruptcy to recover or collect debts due from third parties or to set aside transfers of property to third parties alleged to be fraudulent as against creditors, including payments in money or property to preferred creditors?

2nd. Can the district courts of the United States under any circumstances entertain jurisdiction over suits brought by trustees in

bankruptcy to set aside fraudulent transfers of money or property made by the bankrupt to third parties before the institution of the proceedings in bankruptcy?

3rd. Can this court, being the district court for the northern district of Iowa, take jurisdiction over the suit as it now stands on the record?

4th. If the complainant should dismiss the suit as to the defendants living in Iowa, thus making it a suit between citizens of
3 Iowa, on the one hand, and citizens of South Dakota, on the other, and involving over $2,000, exclusive of interests and costs, would jurisdiction exist in this court?

O. P. SHIRAS,
District Judge for Northern District of Iowa.

And it is further ordered that the transcript to be certified by the clerk of this court to the Supreme Court shall contain the bill of complaint, the demurrer filed thereto, and the foregoing certificate.

O. P. SHIRAS, *Judge.*

4 In the District Court of the United States in and for the Northern District of Iowa, Western Division.

In the Matter of the Estate of FRANK T. WALKER, Bankrupt.

FRED BARDES, Trustee, Complainant,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA; The Bank of Alcester, of Alcester, South Dakota, and Charles R. Allen, Defendants. } In Bankruptcy.

To the judges of the district court of the United States for the northern district of Iowa, western division, in equity:

Fred Bardes, trustee for the creditors of Frank T. Walker, bankrupt, of Sioux City, Iowa, a citizen of the State of Iowa and of the United States, brings this his bill into this court of bankruptcy against the First National Bank of Hawarden, Iowa, which is a corporation created and existing in due form of law under and by virtue of the acts of Congress relating to national banks; against the Bank of Alcester, of Alcester, South Dakota, a copartnership, whose principal place of business is at Alcester, South Dakota, and which copartnership is composed of Frederick E. Watkins, J. A. Moody, A. Melrose, and L. K. Williams, and against Charles R. Allen, a resident and citizen of Hawarden, Iowa.

And thereupon your orator complains and says that on the 14th day of January, 1899, the said Frank T. Walker was engaged, at Hawarden, Iowa, in the business of selling, at retail, clothing, hats, caps, boots, shoes, rubber goods, and other articles of mer-
5 chandise usually kept in a general clothing store, and that the said Frank T. Walker at said time was the owner of and possessed a similar stock of clothing and merchandise at Alcester, in the State of South Dakota.

And your orator further shows that at said time the said stock of clothing and merchandise possessed at Alcester, South Dakota, was of the reasonable value of thirty-five hundred dollars.

And your orator further shows that at said time and on the 16th day of January, 1899, the said Frank T. Walker was indebted to various persons for goods, wares, and merchandise previously sold and delivered to him in the sum of about twelve thousand dollars, and was indebted to the said First National Bank of Hawarden, Iowa, in the sum of about one thousand dollars for money previously borrowed from the said First national bank, and was indebted to the bank of Alcester, of Alcester, South Dakota, a copartnership composed of various persons, in the sum of about four hundred and fifty dollars, and that at said time and on the 16th day of January, 1899, the said Frank T. Walker was insolvent and unable to liquidate his indebtedness aforesaid.

And your orator further shows that on the 16th day of January, 1899, the said Frank T. Walker made a pretended sale of his said stock of clothing and merchandise owned and possessed by him at Alcester, South Dakota, to one Charles R. Allen for the sum of about seventeen hundred and sixty-four dollars, which amount was evidenced by a promissory note executed by the said Charles R. Allen to the said Frank T. Walker on the said date; which promissory note was without interest and matured on or about the first day of August, 1899.

6 And your orator further shows that on the said 16th day of January, 1899, and at the time of the said sale of said stock of clothing and merchandise by the said Frank T. Walker to the said Charles R. Allen, the said Frank T. Walker made a pretended sale and delivery of said promissory note, by endorsement thereon, to the said First National Bank of Hawarden, Iowa, for the sum of about sixteen hundred and twenty-nine and $\frac{85}{100}$ dollars, and that at said time the said First National Bank of Hawarden, Iowa, paid to the said Walker the sum of about one hundred and seventy-five dollars in cash for said promissory note and applied the balance of said note to the discharge of the indebtedness of said Walker to the said First National Bank of Hawarden, Iowa, and to the said Bank of Alcester, of Alcester, South Dakota.

And your orator further complains and shows upon information and belief that by the pretended sale of said stock of merchandise to the said Allen and the execution of said note to the said Walker, and the sale and delivery thereof to the said First National Bank of Hawarden, Iowa, the said Walker intended to give a preference to the said First National Bank of Hawarden, Iowa, and to the said Bank of Alcester, creditors of the said Walker, over and above the other credits of the said Walker, and the said Charles R. Allen, the said Bank of Alcester, and the said First National Bank of Hawarden, Iowa, at the time of the pretended sale and endorsement of said note and the payment of the sum thereon and the discharge of the said indebtedness due the said First National Bank of Hawarden, Iowa, and the said Bank of Alcester, South Dakota, had reasonable cause to

believe and did believe that said Walker was insolvent, and
7 that it was the intention thereby to give a preference to the said First National Bank of Hawarden, Iowa, and the said Bank of Alcester, South Dakota, over and above the other creditors of the said Walker, and participated in said intention to give a preference, as aforesaid, fully knowing said Walker was insolvent, in fraud of the acts of Congress of the United States relating to bankruptcy.

And your orator further shows that about the 27th day of January, 1899, and within four months after said preference, a petition was filed in this cause by Friend Brothers Clothing Company of Milwaukee, Wisconsin, and Straw & Ellsworth Manufacturing Company of Milwaukee, Wisconsin, both corporations organized and existing under the laws of the State of Wisconsin, and by Lehman Aarons, a sole trader, under the name and style of Lehman Aarons & Company, of Milwaukee, Wisconsin, praying that service of said petition, with subpœna, be made upon said Frank T. Walker, as provided in the acts of Congress relating to bankruptcy, and that said Walker be adjudged by the court to be a bankrupt within the purview of said acts.

And your orator further states that about the first day of March, 1899, the said Frank T. Walker was adjudged by the court to be a bankrupt, as in said petition prayed, and at the first meeting of the creditors of said bankrupt, held about the 27th day of March, 1899, and not more than thirty days after said adjudication, at Orange City, in the county of Sioux and State of Iowa, in which county the said bankrupt had his principal place of business and resided and had his domicile, your orator was by the creditors of said bankrupt
duly elected and appointed sole trustee of the estate of the said
8 bankrupt, and about the 3rd day of April, 1899, and within ten days after the said appointment, qualified as said trustee by entering into bond to the United States, with sureties approved by the court, conditioned for the faithful performance of his official duties as said trustee; and your orator further shows that said appointment is still in force and is unrevoked, and that he now is the duly elected, qualified, and acting sole trustee of the estate of the said bankrupt.

And your orator further charges and alleges upon his information that the said defendants, The First National Bank of Hawarden, Charles R. Allen, and The Bank of Alcester, at the time of receiving said note and said stock of merchandise at Alcester, S. D., had knowledge of the object and intent with which the same was given to them, and received the same in order to assist and enable the said bankrupt to carry out the fraudulent purpose aforesaid.

And your orator further alleges upon information and belief that at the time said note was given and the alleged sale of the stock of merchandise made to the defendants, as aforesaid, the said Walker was largely indebted on past-due claims and was acting in contemplation of insolvency, and that said transfers were made and received with intent to hinder, delay, impede, and defraud his creditors, and with a view to prevent said property from being applied

in the payment of his debts, and with the further intent to cover up his property so that his creditors should not be able to reach the same.

And your orator further shows upon information and belief that the said pretended sale of the said stock of clothing and merchandise in the village of Alcester and State of South Dakota, by
9 the said bankrupt to the said Charles R. Allen was in contemplation of bankruptcy and was fraudulent and void, and that the said Allen was not the real purchaser of said stock of clothing and merchandise, but that the said pretended purchase by the said Allen was for the use and benefit of the said First National Bank of Hawarden, Iowa, and the Bank of Alcester, of Alcester, South Dakota, and that the said First National Bank of Hawarden, Iowa, was the real purchaser of said stock of clothing and merchandise, and that the sale thereof to the First National Bank of Hawarden, Iowa, was for the purpose of creating a preference in favor of the said First National Bank of Hawarden, Iowa, and the Bank of Alcester, South Dakota, of the indebtedness of the said Walker to the said defendants, as aforesaid.

And your orator further alleges that Frederick E. Watkins is president of said First National Bank of Hawarden, Iowa, and is the managing partner of said copartnership known as the Bank of Alcester, of Alcester, South Dakota, and was such officer and such managing partner during the times and in all the transactions referred to herein.

And your orator further shows and alleges that by the provisions of the act of Congress approved July 1, 1898, to establish a uniform system of bankruptcy, your orator became, by operation of law, entitled as such trustee to the possession of all the property of the said Frank T. Walker, bankrupt, and to all property conveyed by him to said First National Bank and Charles R. Allen, defendants, in fraud of his creditors, as aforesaid, and entitled to sue for and recover the same as assets of said bankrupt; and forasmuch as your orator can have no adequate relief except in this court, sitting as a court of bankruptcy, and to the end, therefore,
10 that the said defendants may, if they can, show cause why your orator should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make (but not under oath, the same being expressly waived) to the premises, and to all the separate matters hereinbefore stated and charged, as full and particularly as if the same were repeated and interrogated as to each of said matters, and that the said note and the conveyance of said stock of merchandise be declared fraudulent and void, and that the same may be decreed to be invalid against the complainant as trustee aforesaid, and that the same may be set aside, and that the said defendants and each of them may be compelled to account for the said property and the profits thereof so fraudulently conveyed, as aforesaid, and any moneys received by virtue of said conveyances or note, and that the said defendants, their agents and servants, be restrained

and enjoined from disposing of or in anywise transferring said property, or of any money received thereunder, and from mixing and commingling said property with their own, under penalties to be pronounced by the court, and that your orator may recover the costs of this proceeding and have such other and further relief as may seem just and proper, may it please your honor- to grant unto your orator the writ of subpœna, issued out of and under the seal of this court, directed to said defendants and each of them, commanding them, on a day certain therein to be named and under a certain penalty, to appear in this honorable court, then and there to answer all and singular the premises, and to stand and
11 perform and abide such further order, direction, and decree as may be made against them or either of them.

And your orator will ever pray.

FRED BARDES,
Trustee, Complainant.
LOHR, GARDINER & LOHR,
Solicitors for Complainant.

H. C. GARDINER, *Of Counsel.*

STATE OF IOWA, }
Woodbury County, } *ss:*

On this 27th day of April, 1899, before me personally appeared Fred Bardes and made oath that he has read the foregoing bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be based upon information and belief, and that as to those matters he believes them to be true.

FRED BARDES.

Subscribed and sworn to before me this 27th day of April, 1899.

F. W. LOHR,
[SEAL.] *Notary Public in and for Woodbury County, Iowa.*

Filed April 28, 1899.

A. J. VANDUZEE, *Clerk,*
By J. H. BOLTON, *Deputy.*

12 In the District Court of the United States in and for the Northern District of Iowa, Western Division.

In the Matter of the Estate of FRANK T. WALKER, Bankrupt.

FRED BARDES, Trustee, Complainant,
vs.
FIRST NATIONAL BANK OF HAWARDEN, IOWA; The Bank of Alcester, of Alcester, South Dakota, and Charles R. Allen, Defendants. } In Bankruptcy.

Demurrer of the Above-named Defendants to the Bill of the Above-named Complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and for- as the same are therein set forth and alleged, doth demur to said bill, and for causes of demurrer showeth:

1st. That it doth appear by the complainant's own showing by said bill that he is not entitled to the relief demanded in said bill against these defendants.

2nd. It appears from said bill that this court is without jurisdiction for the reason that the controversy is between citizens of the same State.

Wherefore, and for divers other good causes of demurrer appearing on said bill, defendants doth demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make answer to said bill, and they humbly pray to
13 be hence dismissed with their reasonable costs therein sustained.

WM. MILCHRIST,
Solicitor & of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in the point of law.

WM. MILCHRIST,
Of Counsel for Defendants.

STATE OF IOWA, *Woodbury County,* } *ss:*

William Milchrist, being duly sworn, deposes and says: I am the attorney for the above-named defendants. The foregoing demurrer is not interposed for delay.

WM. MILCHRIST.

Subscribed in my presence and sworn to before me by the said William Milchrist this 10th day of June, A. D. 1899.

CORA G. WHEELOCK,
[SEAL.] *Notary Public in & for Woodbury County, State of Iowa.*

Filed June 12th, 1899.

A. J. VANDUZEE, *Clerk.*

14 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, }

I, A. J. Vanduzee, clerk of the United States district court in and for the northern district of Iowa, do hereby certify that the foregoing transcript contains the full, true, and complete copies of the bill of complaint and the demurrer in the case of Fred Bardes, trustee of estate of Frank T. Walker, bankrupt, against First National Bank of Hawarden, Iowa, *et al.*, as full, true, and complete as the original of the same now remains on file and of record in my office, and that attached hereto is the original certificate of O. P. Shiras, judge of the district court of United States in and for said district, certifying to the Supreme Court of the United States for its consideration certain questions arising in said suit.

In witness whereof I hereunto subscribe my name and affix the seal of said U. S. district court, at my office, in Dubuque, in said northern district of Iowa, this 14th day of October, A. D. 1899.

[Seal District Court U. S., Northern District of Iowa.]

A. J. VAN DUZEE,
Clerk U. S. District Court, Northern District of Iowa.

Transcript, 46 fo.....	4.60
Certificate & seal.....	35
	$4.95

Endorsed on cover: File No., 17,543. N. Iowa D. C. U. S. Term No., 429. Fred Bardes, trustee of the estate of Frank T. Walker, bankrupt, complainant, *vs.* The First National Bank of Hawarden, Iowa, *et al.* Filed October 21, 1899.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 429.

FRED BARDES, TRUSTEE OF THE ESTATE OF FRANK T. WALKER, BANKRUPT, - *Complainant*,

vs.

FIRST NATIONAL BANK OF HAWARDEN, IOWA, THE BANK OF ALCESTER, OF ALCESTER, SOUTH DAKOTA, AND CHAS. R. ALLEN, - - - *Defendants*. } IN BANKRUPTCY.

QUESTIONS CERTIFIED.

1ST. DO THE PROVISIONS OF THE SECOND CLAUSE OF SECTION 23 OF THE ACT OF CONGRESS KNOWN AS THE BANKRUPT ACT OF 1898, CONTROL AND LIMIT THE JURISDICTION OF ALL COURTS, INCLUDING THE SEVERAL DISTRICT COURTS OF THE UNITED STATES, OVER SUITS BROUGHT BY TRUSTEES IN BANKRUPTCY, TO RECOVER OR COLLECT DEBTS DUE FROM THIRD PARTIES, OR TO SET ASIDE TRANSFERS OF PROPERTY TO THIRD PARTIES ALLEGED TO BE FRAUDULENT AS AGAINST CREDITORS, INCLUDING PAYMENTS IN MONEY OR PROPERTY TO PREFERRED CREDITORS?

2ND. CAN THE DISTRICT COURT OF THE UNITED STATES UNDER ANY CIRCUMSTANCES ENTERTAIN JURISDICTION OVER SUITS BROUGHT BY TRUSTEES IN BANKRUPTCY TO

SET ASIDE FRAUDULENT TRANSFERS OF MONEY OR PROPERTY MADE BY THE BANKRUPT TO THIRD PARTIES BEFORE THE INSTITUTION OF PROCEEDINGS IN BANKRUPTCY?

3RD. CAN THIS COURT, BEING THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA, TAKE JURISDICTION OVER THE SUIT AS IT NOW STANDS ON RECORD?

4TH. IF THE COMPLAINANT SHOULD DISMISS THE SUIT, AS TO THE DEFENDANTS LIVING IN IOWA, THUS MAKING IT A SUIT BETWEEN CITIZENS OF IOWA ON THE ONE HAND AND CITIZENS OF SOUTH DAKOTA ON THE OTHER, AND INVOLVING OVER $2,000 EXCLUSIVE OF INTEREST AND COSTS, WOULD JURISDICTION EXIST IN THIS COURT?

The questions here presented have been considered by the district courts of the United States in the following cases, and after a full discussion the decision is there reached that the district court as a court of bankruptcy has jurisdiction to hear and determine cases of this character:

In re Severs, 91 Fed. R., 366. (Affirmed by Circuit Court of Appeals and reported under title *Davis* v. *Bohle*, in 92 Fed. R., 325.)
In re Brooks, 91 Fed. R., 508.
Carter v. *Hobbs*, 92 Fed. R., 594.
In re Newberry, 97 Fed. R., 24.

We feel that we can add little to the able and exhaustive reasoning of these learned courts. The same question is also considerd *In re Gutwillig*, 90 Fed. R., 481, where the court held that the court of bankruptcy has jurisdiction to enjoin the assignee of the bankrupt from disposing of or interfering with the property transferred to him under the assignment, pending the hearing on the petition in bankruptcy. This decision was affirmed by the Circuit Court of Appeals, Second Circuit, 92 Fed. R., 337.

It is true some of the district courts have held that a court of bankruptcy has not jurisdiction in such suits, but in most of those cases the exact question here raised was not before the court for determination. The question *In re Abraham*, 93 Fed. R., 767, relied upon by counsel for defendants, is not whether a trustee in bankruptcy can by bill in equity bring suit in the district court to set aside fraudulent conveyances of the bankrupt to third parties, in pursuance of the trustee's duty to "cause the estates of bankrupts to be collected, reduced to money, and distributed," but whether the court has jurisdiction by summary proceedings, seizure of goods and rule entered against a purchaser at assignee's sale, to compel him to appear in court in ten days and establish his right to the goods, or failing to do so be decreed to have no right thereto. The appellate court very properly decided it has no such jurisdiction. Any other determination would be confiscation, the taking of property without due process of law. The purchaser was entitled to his day in court, and the burden of establishing title to the property was not upon the purchaser in possession, but upon his creditors seeking the possession.

If the express terms of article b, section 23, do not absolutely prohibit the district court denying itself jurisdiction, as to whether it has jurisdiction or not, may be debated. If, however, the plain and express provision of article b does so prohibit, nothing else in the act can be considered whether relevant or not. We think the language of article b is sufficiently ambiguous or indefinite as to leave the matter open for construction, and therefore the rule of examination of the whole law to ascertain the real intendment is applicable.

It is provided in section 2 of the act that district courts have such jurisdiction at law and in equity as will

enable them to exercise original jurisdiction in bankruptcy proceedings, "to cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided." The allegations of the bill, which are admitted by the demurrer, are to the effect that the property or money which it is sought to recover from defendants is a part of the bankrupt's estate. This suit is an effort to collect this estate and reduce it to money for distribution among the creditors. If the district court as a court of bankruptcy is powerless to assist the trustee in these endeavors, what is the meaning of the language used in this section? If this suit is heard upon its merits then a controversy will have arisen in relation to the collection of this estate. What force has the provision conferring jurisdiction to determine controversies if the court cannot hear and determine such controversies? The exception, as has been clearly pointed out in the cases cited, manifestly refers to section 23, which admits the jurisdiction of the court under certain limitations. If it was not intended to give the district court general jurisdiction in cases of this kind, why was the *express* limitation placed upon the circuit court by the first paragraph of section 23? Such limitation was unnecessary unless to make clear the distinction between the general jurisdiction of the district court and the limited jurisdiction of the circuit court, as section 23 leaves the circuit court with exactly the same jurisdiction it had before the passage of the act. To give the circuit court jurisdiction under the act there must be diversity of citizenship and sufficient amount in controversy, but such was already the law. The cases we have cited from the district court hold that the second clause of section 23 is a limitation upon the circuit court only. If a limitation

upon the district court, what good reason can there be for holding that it is not also a limitation upon the state courts? The bankrupt could not have prosecuted suits of this character in any court, and the obvious conclusion then is that no court in existence has jurisdiction of such a suit.

Section 23 distinguishes "controversies at law and in equity" from "proceedings in bankruptcy." This makes it plain that the term "bankruptcy proceedings," as used in section 2, was intended to have a general application to all matters and suits arising under the act, including suits by the trustee, and a specific meaning as used to denote the mere administrative acts connected with a bankrupt estate. The duties of a trustee in bankruptcy are partly administrative and partly as a suitor in court. Most of the subdivisions of section 2 refer to administrative acts in the settlement of a bankrupt estate, while clause 7 can be construed to refer to nothing unless to suits brought by the trustee. The word "controversies" must there be used in the same sense as in section 23.

It is of course admitted that the state courts likewise have jurisdiction of suits by the trustee, but this is no reason why the Federal district court has not also jurisdiction of suits of the same class. In the great majority of suits over which the circuit court has jurisdiction, in fact in all cases where diversity of citizenship and amount in controversy only are necessary to confer jurisdiction, the state courts have the same jurisdiction if the plaintiff chooses to submit his controversy to them.

If it is a fact that no provision is made by the bankruptcy act for appeal in suits between the trustee and a third person, it cannot affect the jurisdiction of the district court, and does not in a remote degree indicate that

such litigation was not contemplated. Section 2 confers upon the district court all powers in law and in equity necessary to an exercise of jurisdiction, and the last clause of said section provides that: "Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated." While sitting as a court of bankruptcy and determining controversies arising on a creditor's bill, the district court is a court of equity, and as such appeals from it may be taken as from any court exercising the same powers. Section 6 of the act of March 3d, 1891 (26 stat., 326), confers upon the circuit court of appeals appellate jurisdiction to review by appeal or writ of error final decision in the district court in all cases other than those otherwise provided for. If, because no provision was made for appeal by the bankruptcy act, the district court has not jurisdiction, then for the same reason the circuit court would be deprived of jurisdiction, even in cases coming within the provisions of section 23. The jurisdiction of the district court is admitted when the consent of the defendant is secured, but the objection of counsel, if valid, would apply with the same force to such condition.

Section 23 provides for appeals from certain administrative acts of the courts of bankruptcy, while section 24 confers appellate jurisdiction in other bankruptcy proceedings upon the courts already possessing appellate powers. Again, it is clear from the reading of the first paragraph of section 24 that the word "controversies" is there used in the same sense as in the 7th clause of section 2, and refers to suits for the collection of the estates of bankrupts as provided by said clause 7. Section 24 then *distinctly provides* for appeals in suits brought by the trustee in the district court. It can have no reference

to cases within the jurisdiction of the circuit court, for it mentions only "controversies arising in bankruptcy proceedings from the courts of bankruptcy," and the district court is the only court of bankruptcy. It cannot refer to appeals from the administrative acts of the courts of bankruptcy, for they are provided for by section 25. What controversies are then contemplated by section 24 unless those arising in suits to "cause the estates of bankrupts to be collected, reduced to money and distributed?" It is fair to assume that if such litigation in the Federal court had not been contemplated, the right of appeal would not have been provided.

We call the Court's attention to section 26.

Arbitration of Controversies.

"Art. a. The trustee may, pursuant to the direction of the court, submit to arbitration *any* controversy arising in the settlement of the estate."

"b. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy and the third by the two so chosen, or, if they fail to agree in five days after their appointment, the *court* shall appoint the third arbitrator."

"c. The written finding of the arbitrators or a majority of them, as to the issues presented, may be filed in *court* and shall have like force and effect as a verdict of a jury."

Arbitration may be had in any controversy. This cause may be arbitrated. The method is fully provided by which the arbitrators may be selected. The district court of the United States is doubtless the court which is referred to in section 26 with relation to arbitration, because the arbitrators are to all intents and purposes a "jury," and their finding on being filed in court a verdict. Could a state court act in a matter of arbitration

under this statute? If United States district courts sitting as courts of bankruptcy have jurisdiction to arbitrate *any* controversy arising between its trustees and any other person "in the settlement of the estate," was it the intention to exclude it from jurisdiction of the same controversy in law or equity?

By section 27 the trustee may, with the approval of the court, compromise *any* controversy arising in the administration of the estate, upon such terms as he may deem for the best interests of the estate.

What court gives this approval? If it is the United States district court as a court of bankruptcy, why should it have jurisdiction to *compromise* "any controversy" and yet have no jurisdiction to *try* any controversy? Especially if it was the intent of the legislature to give exclusive jurisdiction to state courts in *some* controversies. All necessary rules, forms and orders as to procedure and for carrying this act into force and effect shall be prescribed by the Supreme Court of the United States.

Section 36.

Is this procedure for carrying this law into full force and effect for the state courts? Marshaling the assets of an estate in bankruptcy is carrying the act into force and effect. If to do so third parties have a controversy with the trustee, is the bankruptcy court helpless to enforce the legal rights of its officers?

By this act, referees have the power to take possession of the property of the bankrupt.

Article 3, section 38.

The trustee upon his appointment and qualification is vested by operation of law, with the title of bankrupt

as of the date of the adjudication of all property which prior to the filing of the petition he could by any means have transferred, including such property as has been transferred in fraud of creditors.

Section 70.

The transfer of the property from bankrupt Walker to the defendants as alleged was in fraud of his creditors within the meaning of said section. All property transferred with intent to defeat the operation of the bankruptcy law is of necessity in fraud of creditors.

The property of bankrupt Walker, on his being adjudicated a bankrupt, became vested in the trustee after the latter had qualified, including the property conveyed to the defendant banks. This property was then *custodia legis.*

"Property conveyed by a bankrupt in fraud of creditors, prior to the passage of the bankrupt law, is to be regarded as vested in the assignee in bankruptcy by force of that act, and by virtue of proceedings thereunder."

Goodwin v. *Sharkey*, 5th Abb. Prac. (N. S.), 64.

By the demurrer, defendants admit that the bankrupt's property was transferred to them in fraud of creditors and in contravention of the provisions of the bankruptcy law. The court of bankruptcy then has the right of custody of this property by reason of the title thereto being vested in its officers. Is there anything in article b, of section 23, prohibiting the district court from drawing to its possession, property of which its officer has title, and which by operation of law it is entitled to distribute, by the admissions of the defendants in filing this demurrer?

Under the law of 1867 it was held that "suits by an assignee in bankruptcy are excepted from the general

rule that Federal courts have no jurisdiction of controversies between citizens of the same state, and this exception included a suit by such assignee against a person not a party to the proceedings in bankruptcy."

Atkinson v. *Purdy*, Fed. Cas., No. 316.

"A bill by an assignee in bankruptcy to set aside a fraudulent conveyance by the bankrupt is a case arising under the constitution and laws of the United States, of which the Federal courts have jurisdiction irrespective of the citizenship of the parties."

Woolridge v. *McKenna*, 8th Fed. Rep., 650.

"The Federal courts have jurisdiction over a plenary suit against the assignee in bankruptcy to assert a claim of superior title to property of the bankrupt fraudulently assigned."

Olney v. *Tanner*, 10th Fed. Rep., 101.

"The Federal court of bankruptcy has exclusive jurisdiction to adjudicate between the assignee and any person having a claim against the estate."

In re Anderson, 23d Fed. Rep., 482.

"The district court of the United States has exclusive jurisdiction of all controversies between the assignee and the bankrupt depending on his relation as such."

Carr v. *Gale*, Fed. Cas., 2434.

"The district courts of the United States have original jurisdiction of all cases and controversies between third persons and an assignee in bankruptcy as such."

Backman v. *Packard*, Fed. Cas., 709.

"The district court of the United States has full power as a court of equity to settle all controversies between the bankrupt and his creditors."

Fowler v. *Dillon*, Fed. Cas., 5000.

Where there is an admission, as in this case, for the purposes of this hearing, that the title to the property is vested in the officer of the district court, and the district court is entitled to the same, does the present bankruptcy act require the officer of that court, under such conditions, to resort to the state tribunal for the purpose of securing the bankruptcy court that which the defendants concede by this demurrer that court is absolutely entitled to? It seems impossible that there was any such legislative intent in the enactment of the law.

The moment that an adjudication of bankruptcy has been made, the title to all the property of the bankrupt, as of that date, passes to the person who is subsequently chosen trustee. From the time of the adjudication the property of the bankrupt is in the custody and under the control of the bankruptcy court. From the time such property, by the adjudication of bankruptcy, comes into the custody of the bankruptcy court, it is in *custodia legis.*

Keegan v. King, et al., 96th Fed. Rep., 758.

"This is a suit to set aside a contract upon grounds created and established by an act of congress, the bankrupt law. Such a suit is a suit arising under the laws of the United States and this court has jurisdiction. The Federal courts are the appropriate tribunals for the trial and hearing of such cases and as the rights of the parties rest upon the provisions of the laws of the United States, the parties have the right to the decision of the Supreme Court of the United States, upon them."

Main et al., v. Glen, 7th Biss., 86, or Federal Cases No. 8, 973.

"Under the bankrupt law of 1841 the United States district courts had jurisdiction of all matters and proceedings arising under it and of all suits at law or in

equity to be brought by the assignee or any person claiming an adverse interest."

Chemung Canal Banks v. Judson, 8th N. Y., 254.

In suits under the bankrupt law, the United States courts have exclusive jurisdiction.

Voorhies v. Frisbie, 25th Mich., 476.

The trustee in bankruptcy on being duly selected and qualified, takes the title to the bankrupt's estate. While further proceedings may be necessary to actual, manual, possession of it, he has instantly something more than a lien, he has the title. As the trust under which the trustee holds the title to the property can not be performed except the trustee reduce the property to actual possession and dispose of the same under the decree of the United States district court, such court has jurisdiction of a suit to obtain possession of that which its officer holds title.

Olney v. Tanner, et al., Federal Cases No. 10,506.

Under the bankruptcy law of 1867 the assignee was held to be vested with the title to all property conveyed by the bankrupt in fraud of creditors, and it was held that he might recover the bankrupt's interest in the same whether or not any creditor was in position to attack the transfer.

Platt v. *Matthews*, 10th Fed. Rep., 280.

It was also held that under the law of 1867 the assignee in bankruptcy was vested with the title to all property of the bankrupt conveyed in fraud of creditors, and that it was not necessary to entitle said assignee to maintain a suit that he have actual possession of the property.

Lehman v. La Forge, 42d Fed. Rep., 493.

It was also held under said law of 1867 that an

assignee in bankruptcy under the United States bankrupt law was not merely vested with the remedies of creditors as to property fraudulently transferred but with the ownership of such property, and that he might bring an action as such owner to reduce the same to possession.

Mann v. Flower, 25th Minn., 500.

In re Litchfield, 13th Fed. Rep., 863, it was held:

"The assignee is an officer of the court and his possession is the possession of the court. The rule is the same as in cases of receivers."

The court in this same case also states the law as follows: "Indeed, the power of the district court to wind up bankrupt estates, unfettered by the interference of state courts, has been strongly asserted by this court, and I have seen no reason to change my views in that regard. To make a bankrupt law effectual there must be a court specially authorized to administer it. If assignees are bound to go from county to county, defending their rights to different parcels of an estate, the whole administration of the law might as well be vested in the state courts. It is no disrespect to those courts to say that the want of harmony in their decisions, which would inevitably result, would go far towards destroying the efficiency of the system. It is almost as important that the administration of the law should be uniform, and subject to the guidance of one supreme court, as that the law itself should conform to the constitutional requirement of uniformity. Hence, an exceptional power is given to the district courts in bankruptcy cases to enjoin proceedings in the state courts—a power which has never been questioned since the decision of the Supreme Court in Ex parte Schwab, 98th U. S., 240."

We believe one good reason for permitting such controversies in the Federal court to be that which gives the right to citizens of another state or of a foreign country to have their controversies determined in the Federal court, removed from the local influences and prejudices of the state courts. In the vast majority of cases arising under the bankruptcy act the creditors are widely scattered, many of them, if not the greater number, being citizens of a different state from the bankrupt. It is necessarily so in the commercial world in which more than nine-tenths of bankruptcy cases arise. It is said in *Carter* v. *Hobbs*, *supra*, that "The trustee stands in the place of the creditors of the bankrupt, and has the same rights and may pursue the same remedies in their behalf as they had or would have been entitled to if there had been no adjudication of bankruptcy." Under a condition which makes a bankruptcy law necessary or expedient the sympathies and prejudices of people for their unfortunate neighbors in business are uncommonly excited, and the law making power wisely considered the importance of having the forum in which to try cases arising under the act removed from this influence. If the bankruptcy court has no jurisdiction in such cases it is shorn of power to accomplish one of the very objects of its creation. It would be a strange act indeed, which created a court having power merely to administer the details of a bankrupt estate, a power almost wholly given over to an appointee of the court, and turned over to the state courts the important matters of litigation necessary for the preservation, collection and distribution of the bankrupt estate. It is logical and proper that a trustee should have the right to bring suit in the court to which he owes his creation. If there is doubt as to the meaning of any part of the Act, that part should

be so construed as to give force to the Act as a whole, and not deprive it of its principal share of vitality. It is proper to consider the results of a construction when the construction is itself in doubt, but we believe such an interpretation can be given the Act as a whole as will give the district court jurisdiction of this cause without repugnance to any part of the Act.

Respectfully submitted,

WILLIAM F. LOHR,
HENRY C. GARDINER,
FREDERICK W. LOHR,
DELOSS C. SHULL,
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Solicitors and of Counsel for Complainant.

No. 429
FILED
DEC 19 1899
JAMES H. MCKENNEY,
Clerk.
Brief of Mill Street for Defend

IN THE

SUPREME COURT OF THE UNITED STATES.

Filed Dec. 19, 1899.

OCTOBER TERM, 1899.

No. 429.

FRED BARDES, Trustee of the Estate of Frank T. Walker, Bankrupt, *Complainant*,

vs.

FIRST NATIONAL BANK OF HAWARDEN, Iowa, THE BANK OF ALCESTER, of Alcester, South Dakota, and CHARLES R. ALLEN, *Defendants*.

On Questions Certified from the District Court of the United States for the Northern District of Iowa.

JOHN HUTCHINSON, Hawarden, Iowa,
WILLIAM MILCHRIST, Sioux City, Iowa,
Solicitors and of Counsel for Defendant, First National Bank of Hawarden, Iowa.

DEFENDANT'S BRIEF.

IN THE

SUPREME COURT OF THE UNITED STATES.

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DEFENDANT'S BRIEF.

Complainant, as trustee of Frank T. Walker, bankrupt, brought this action to recover from the defendants the value of certain property, alleged to have been conveyed to them by the said Walker, within four months of his being adjudged a bankrupt. The complainant and defendants are shown to be residents of the state of Iowa. Defendants demurred upon the ground

that the court was without jurisdiction, for the reason that the controversy was between citizens of the same state. The district court, desiring the opinion of the supreme court, certified four questions set forth in the record and in the brief of counsel for complainant.

The first clause of *section 23*, of the Bankrupt Act, provides that the "United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy between trustees as such and adverse claimants, concerning the property acquired or claimed by the trustee in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted, and said controversy had been between the bankrupts and such adverse claimants." The jurisdiction here conferred includes all proceedings as distinguished from proceedings in bankruptcy, involving the requisite amount and between proper parties.

If the contention of counsel for complainant that the district courts, as courts of bankruptcy, have jurisdiction regardless of the amount involved or the citizenship of the litigants, is correct, then the first clause of said *section 23* is of no material force or effect. If the district courts have jurisdiction without regard to the amount involved or the citizenship of the parties, why confer jurisdiction on the circuit courts in the limited manner defined in said *section 23?*

The second clause of said *section 23* further limits the jurisdiction of the United States courts, by providing that "suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them, if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant." Said *section 23* refers to all controversies of law and equity distinguished from proceedings in bankruptcy, apparently leaving the jurisdiction of the district courts exclu-

sively in proceedings in bankruptcy. It is, therefore, material to determine if the case at bar is a "proceedings in bankruptcy," within the meaning of the act.

As to what constitutes proceedings in bankruptcy was determined in the case of *Kidder vs. Horrobin et al.*, 72 N. Y., 164. In the opinion it is said, "By section one of the Bankrupt Act, as originally enacted March 2, 1867, the district courts of the United States were constituted courts of bankruptcy, with original jurisdiction in their respective districts in all matters and proceedings in bankruptcy, and with authority to hear and adjudicate upon the same according to the provisions of the act. The section declares that the jurisdiction shall extend to certain enumerated cases; among others, 'to the collection of all the assets of the bankrupt.' In construing this section it has been held that as jurisdiction in bankruptcy was statutory, it was necessarily exclusive in the courts which were designated as courts of bankruptcy, and vested with jurisdiction in bankrupt proceedings by the Bankrupt Act. But it was also held that the declaration, in the same section, that the jurisdiction of the district courts should extend to the collection of the assets of the bankrupt, did not exclude the jurisdiction of the state courts in actions by the assignee to recover the assets of the bankrupt. The same construction was given to similar provision in the Bankrupt Act of 1841. (*Ex parte Christy*, 3 How. (U. S.) 319; *Nugent vs. Boyd, id.*, 426; *Ward vs Jenkins*, 10 Metc., 583.)

"The first section of the Bankrupt Act was amended by the act of congress, approved June 22, 1874, by adding thereto this proviso: 'Provided that the court having charge of the estate of any bankrupt may direct that any of the legal assets or debts of the bankrupt as contradistinguished from equitable demands, shall, when such debt does not exceed $500, be collected in the courts of the state where such bankrupt resides, having jurisdiction of the claims of such nature and amount.' It is claimed

that this proviso is to be construed as conferring upon the state courts jurisdiction of actions for the collection of the debts and assets of the bankrupt, directed by the bankrupt court to be brought in the state courts, and by implication to exclude jurisdiction in all other cases. We, however, concur in the view expressed by the supreme court of Massachusetts in *Goodrich vs. Wilson* (119 Mass , 429), that the effect of this amendment is not to confer or take away jurisdiction of the state court, but simply to allow the federal courts to decline to entertain actions at common law, to which the assignee is a party, in which the debt demanded is less than the amount which determines the jurisdiction of these courts in other cases.

"It is also claimed that the state courts are deprived of jurisdiction of actions by assignees in bankruptcy, to recover debts due to the bankrupt, by section 711 of the revised statutes of the United States, which declares that the jurisdiction vested in the courts of the United States in the cases and proceedings mentioned in the section shall be *exclusive* of the courts of the several states. This declaration is followed by a specification of eight classes of cases, of which the sixth is 'of all matters and proceedings in bankruptcy.' The argument is that a suit brought by an assignee in bankruptcy to collect a debt due to the bankrupt is a matter and proceeding in bankruptcy, and that the jurisdiction of the state courts is therefore excluded. We do not think that a suit brought for this purpose is a matter or proceedings in bankruptcy within the meaning of section 711 * * * * * It may be difficult to make a complete definition of what are matters and proceedings in bankruptcy within section 711, but it may be stated in general terms that they are the matters and proceedings which pertain to the special and peculiar jurisdiction of the federal courts as courts of bankruptcy. The adjudication of the bankruptcy; the appointment of assignees and other agents for the administration of the system; the vesting of the title to the bankrupt's prop-

erty in the assignee; the marshaling and distribution of the assets; the discharge of the bankrupt from his debts; these and other like powers belong to the jurisdiction in bankruptcy, and are matters and proceedings in bankruptcy of which state courts have no jurisdiction. But when a common law action is an appropriate remedy to enforce a right asserted by the bankrupt act, or existed in favor of the bankrupt before the bankruptcy, an action to enforce or vindicate the right is not a matter or proceeding in bankruptcy within section 711. The exercise of the original and ordinary jurisdiction of the state courts in such cases is in no proper sense an exercise of jurisdiction in bankruptcy. The fact that the plaintiff makes his title under the Bankrupt Act by assignment from the debtor, or by force or operation of the act itself, does not make the suit a matter or proceeding in bankruptcy, any more than would a suit brought by an assignee appointed under the state insolvent law, to recover a debt owing to the insolvent, be a proceeding or matter in insolvency. It is quite clear that the state courts are not deprived of jurisdiction of actions, by assignees, to collect the assets of the bankrupt by the section referred to. If this was the intention of congress, it is reasonable to suppose that it would have been explicitly declared, and an intention to deprive state courts of jurisdiction will not be inferred from doubtful language, nor will the words of a statute be extended beyond their strict meaning to accomplish this result."

Section 2 of the act defines the jurisdiction of courts of bankruptcy, and said courts are required by clause 7 of said section, to "cause the estate of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided." *Section 23* is evidently the exception referred to in said clause. The estate referred to in said clause 7 evidently refers to the property in possession of the trustee and within the actual jurisdiction of the district court. As to such property claimants might have to as-

sert their right thereto in the bankrupt, or district court, as the jurisdiction of said court probably would be exclusive. In the case at bar the title to the property in controversy is in the defendants, and the trustee can only defeat the title and ownership of defendants by an adjudication in a court of competent jurisdiction that the property was fraudulently transferred.

The right to appoint arbitrators under *section 26* of the act must be limited to controversies arising in the district court. If any other court has jurisdiction to determine controversies between the trustee and claimants of property, such court would not submit to have its jurisdiction interfered with, or be practically deprived of jurisdiction by the action of the district court in appointing arbitrators to determine the rights of the parties as to the controversies pending in said court.

To support the jurisdiction of the district court, counsel for complainant have cited a few cases from the district courts.

In *Re Severs*, 91 Fed. Rep., 367, the only question presented was that of the right of creditors to apply for the appointment of a receiver to take charge of assets in the hands of the assignee of the party declared to be a bankrupt, before the appointment of a trustee. It is held that such right existed, and that as the making of a general assignment for the benefit of creditors is of itself an act of bankruptcy, the assignment law, under which the assignment was made, was suspended, and the assignee acquired no right, title or interest in and to the property assigned. This decision was affirmed upon appeal, in the case of *Davis vs. Boehle*, 92 Fed. Rep., 325.

In Re Brooks, 91 Fed. Rep., 508, is next cited by complainant's counsel. That was an action brought by the trustee to secure the return of property sold under the foreclosure of a chattel mortgage executed by the bankrupt, after the mortgagor had been adjudged bankrupt, but before the appointment of a trustee. In the decision it is said "the mortgagor has a right to re-

deem, which continues all the way to the time of sale (Sec. 2264), of which he and those claiming under him are entitled to notice (Sec. 2266). After the filing of the petition there was no one to act upon a notice, or upon whom notice could probably be given, until there should be a trustee, and the petitioner could not lawfully proceed according to the provisions of the statute of the state, nor without the leave of the court having the jurisdiction and control of the property. The taking away of the property is not only an unlawful interference with the jurisdiction of the court, but the receiving of 'any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act' is made highly penal. (Sec. 29 B.) That an officer having exclusive possession of the property of a bankrupt could not lawfully proceed, after bankruptcy proceedings, without notice, was treated as unquestionable in the case of *Connor vs. Long*, 104 U. S., 228."

This case does not apply, as in the case at bar; the property in controversy had been sold and transferred before the petition was filed, asking that Walker be adjudged a bankrupt.

The case of *Carter vs. Hobbs et al.*, 92 Fed., 594, is also cited by counsel for complainant. Said action was brought to set aside as fraudulent a mortgage executed by the bankrupt within four months of the filing of a petition for his adjudication as a bankrupt. In the decision rendered it is said, on *page 597*, "It is next insisted that this Court is without jurisdiction, and that the bankrupt's estate, which has passed under the custody of the court, and is now in the possession of its trustee, can only be cleared of the fraudulent encumbrances placed thereon by a suit brought in the court of the state. The trustee is vested by operation of law with the title of the bankrupt as of the date of the adjudication, among other things, to all property transferred by him in fraud of his creditors, as well as to all property which, prior to the filing of the petition, he could, by any other means,

have transferred, or which might have been levied upon and sold by judicial process against him. *Bankruptcy Act, Sec. 70.* The word "transfer" includes the sale and every other different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as by payment, pledge, mortgage, gift or security. *Id. Sec. 1, cl. 25.* Therefore, the title to the bankrupt's property, encumbered by the mortgages and lease, was transferred by operation of law to, and vested in, the trustee, an officer of this court. The decree operates in *rem*, and from the moment of the adjudication of bankruptcy the bankrupt's estate is in *custodia legis*, and under the jurisdiction of this court. It is fundamental that no court or individual can interfere with such custody or possession. The assertion of any right against, or to participate in the *res so* in *custodia legis* must be sought in the court in whose custody it is. An attempt to assert such right elsewhere would be rewarded as a contempt. The adjudication proceeds in *rem*, and all persons interested in the *res* are regarded as parties to the bankruptcy proceedings. These parties include not only the bankrupt and trustee, but also all the creditors of the bankrupt."

In the above case the court acquired full control and jurisdiction over the mortgaged property, and should have the right to determine all controversies in relation thereto. An entirely different case would have been presented had there been a sale of the property so that the right of the bankrupt and his title thereto could only be established after it had been determined that the sale was fraudulent within the meaning of the Bankrupt Act.

In *Re Gutwillig*, 90 Fed. Rep., 481, it was held that the court of bankruptcy had jurisdiction to enjoin the disposition of the property by the assignee of the bankrupt, pending the hearing of the petition of the bankrupt, and this decision was affirmed with the court of appeals, *92 Fed., 337.*

The foregoing were cases cited by counsel, and in none of them is it held that the discrict court has jurisdiction to determine controversies between the trustee and the claimant of property transferred and sold, prior to the adjudication in bankruptcy. The right to bring such an action is fully considered in *In Re Abraham*, 98 Fed., 767, where the court, after reviewing the various provisions, says: "The general rule is, a person can be sued in the United States court only in the district whereof he is an inhabitant, and no such action can be brought in those courts unless the matter in dispute exceeds, exclusive of interest and cost, the sum or value of $2,000. It is therefore apparent, that, as a general rule, all controversies at law and in equity as distinguished from proceedings in bankruptcy between trustees, as such (or other duly appointed, empowered representatives of the bankrupt's estate), and adverse claimants, concerning the property acquired or claimed by the trustee (or other duly appointed and empowered representative of the state), which cannot, or are not adjusted by negotiation, arbitration or compromise, must be abandoned by the trustee or adjudicated in the state courts, unless by consent of the proposed defendant suit can be brought in a United States court."

The above case expressly decides that the district court has no jurisdiction of an action between the trustee and a third party, involving the validity of a sale made of property by the bankrupt, prior to the adjudication in bankruptcy, and said case is in harmony with the case of *Mitchell vs. McClure*, 91 Fed., 621.

In the case of *Burneet vs. Morris Mercantile Co.*, 91 Fed., 365, section 23 of the Bankrupt Act is cited, and in relation thereto it is said: "It is clear that congress intended that the jurisdiction to set aside conveyances as made in fraud of creditors should not be enlarged by any operation of the Bankrupt Act; that the jurisdiction in these cases should be determined with reference to the law as it then was. Any construction in favor of the jurisdiction

of the district court of the United States based upon provisions of the law of general application is in conflict with the section quoted. It is argued that because the bankrupt cannot maintain a suit to set aside a conveyance as fraudulent, made by himself, therefore the provision quoted does not apply in a case like this. But this is a question of jurisdiction—a question of the right to determine, not of the principles to obtain in reaching a determination. If the bankrupt himself brought the suit he could not be turned out of court on the question of jurisdiction. The authority of the court to decide as to his rights would be unquestioned, although he might be precluded in his right to relief by his own act. The statute intends to keep all controversies as to the validity of conveyances like these where they would have been if the Bankrupt Act had not been passed. The question of the validity of these conveyances is the vital question. That question, in the absence of the Bankruptcy Act, must necessarily be determined in any proceedings brought, therefore, by the courts of the state, unless the case involves the requisite amount to give a federal court jurisdiction, and is between citizens of different states."

The jurisdiction of the district court involving the title to property is again decided in the case of *Hicks vs. Knost*, 94 Fed., 627, where the court holds that the limitation of jurisdiction referred to by the exception in clause 7 of section 2 is found in section 23, and in referring to said sections the court says: "It is said in support of these rulings that a construction of the exception in clause 7 of section 2, which would remit to the courts of the state jurisdiction over all suits for the collection of debts and demands due the bankrupt, would be repugnant to the body of the act, and not admissible. Is this true? Whether it is or not must be determined from an examination of the act itself, with a view to ascertain its general purpose and intent. The object and purpose of the law is (1) to discharge honest bankrupts from their debts, and (2) to secure to their creditors

an equal distribution of their estates. Now, is it necessary, within the meaning of the law, in order to accomplish these ends, to invest bankruptcy courts with jurisdiction to hear and determine all controversies incident to the collection and conversion into money of the bankrupt's estate? Must all suits and actions for that purpose, actions on accounts, promissory notes, and contracts, and suits to forclose mortgages, set aside fraudulent conveyances, and the like, be brought in the bankruptcy courts, without reference to the amount involved, the citizenship of the parties, or the questions presented? Must the dockets be crowded, and the time of the district courts be taken up with the hearing of minor controversies, at great inconvenience and expense to the litigants, who may be compelled to travel long distances to attend the courts, or was it the intention of congress to follow its long-established policy of permitting such controversies to be determined in the local state courts, at the doors of the people, without unnecessary expense or inconvenience? It is the policy of congress to require all controversies, where the amount involved is less than $2,000, to be determined in the state courts, notwithstanding they may involve a federal question or the parties be of diverse citizenship, and the construction of the Bankrupt Act, insisted upon by the complainant, would antagonize and defeat that policy, in so far as controversies arising under that act are concerned. The consistent adherence of congress to this policy is illustrated by the act of August 13, 1888 (25 Stat., 433), permitting receivers appointed by United States courts to be sued in the state courts, and, if congress intended by the Bankrupt Act to establish an exception repugnant to this general policy, it should clearly appear from the language of the law, without the aid of ingenious construction."

This question is again presented in the following cases:

Goodyear vs. Barnes et al., 94 Fed., 798.
Camp vs. Zellars, 94 Fed., 799.
In Re Oggles, 93 Fed., 426.
In Re Rice et al., 92 Fed., 987.

Section 25 of the Bankruptcy Act defines the cases in which appeals may be taken, but does not provide for the right of appeal in actions between the trustee and a third person. It is fair to assume that if such litigation in the district court had been contemplated the right to appeal would have been provided for.

The decision under the former Acts of Bankruptcy are conflicting, and it is not deemed that any material aid can be derived from their consideration in the construction of the present Bankrupt Act.

Respectfully submitted,

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Hawarden, Iowa.

WILLIAM MILCHRIST,
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Solicitors and of Counsel for Defendant, First National Bank of Hawarden, Iowa.

BARDES *v.* HAWARDEN FIRST NATIONAL BANK.

CERTIFICATE FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA.

No. 429. Submitted December 20, 1899. — Decided December 22, 1899.

The decision in *McLish* v. *Roff*, 141 U. S. 661, that appeals or writs of error in cases in which the jurisdiction of the court was in issue, can only be taken directly to this court after final judgment, and the decision in *United States* v. *Rider*, 163 U. S. 132, that review by appeal, writ of error and otherwise must be as prescribed by the judiciary act of March 3, 1891, c. 517, and that the use of a certificate was limited by it to a certificate by the courts below, after final judgment, of questions made as to their own jurisdiction, and to the certificate by the Circuit Courts of Appeals of questions of law, in relation to which the advice of this court is sought as therein provided, are applicable to cases arising under the bankruptcy act of July 1, 1898, c. 541; and, as this case has not gone to judgment, the certificate must be dismissed.

THE case is stated in the opinion.

Mr. Clarence A. Brandenburg, *Mr. William F. Lohr*, *Mr. Henry C. Gardiner*, *Mr. Frederick W. Lohr*, *Mr. Deloss C. Shull* and *Mr. William H. Farnsworth* for plaintiff.

Mr. John Hutchinson and *Mr. William Milchrist* for defendant.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This is a certificate from the District Court of the United States for the Northern District of Iowa. It appears therefrom that a bill of complaint was filed in that court sitting in bankruptcy by Bardes, trustee of the estate of Walker, who had been therein adjudged a bankrupt on his own petition, seeking to set aside the transfer of a stock of goods by the bankrupt, and to compel defendants to account for the goods or their proceeds, because the transfer was in fraud of the provisions of the bankruptcy act, and of the creditors of the bank; that defendants interposed a demurrer to

the bill on the ground that the court could not take jurisdiction of the case, and that thereupon it was certified that the court, "desiring to obtain the opinion and instruction of the Supreme Court of the United States for its guidance in the premises, hereby certifies to the Supreme Court for its consideration and determination the following questions," and four questions were thereupon propounded. And it was further ordered that the transcript transmitted to this court should contain the bill, the demurrer and the certificate.

By the twenty-fourth section of the bankruptcy act of July 1, 1898, c. 541, 30 Stat. 544, the Supreme Court of the United States, the Circuit Courts of Appeals, and the Supreme Courts of the Territories were invested with "appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases." And it was also provided, § 25, d, that "controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted."

By the fifth section of the judiciary act of March 3, 1891, c. 517, 26 Stat. 826, it was provided that appeals or writs of error might be taken from the District Courts or from the Circuit Courts direct to this court, among other cases, in any case in which the jurisdiction of the court was in issue, but that in such cases the question of jurisdiction alone should be certified from the court below for decision; by the sixth section, that in cases made final in the Circuit Courts of Appeals, those courts might at any time certify to this court any questions or propositions of law concerning which they desired instruction for the proper decision of the cases, and this court might answer the questions, or might require the whole record and cause to be sent up for consideration; and also that in respect of cases so made final, it should be competent for this court to require by certiorari or otherwise any such case to be certified to this court for review and deter-

mination with the same power and authority as if it had been brought here by appeal or writ of error.

It was early held under that act, *McLish* v. *Roff*, 141 U. S. 661, that appeals or writs of error in cases in which the jurisdiction of the court was in issue could only be taken directly to this court after final judgment; and subsequently in *United States* v. *Rider*, 163 U. S. 132, that review by appeal, writ of error, or otherwise, must be as prescribed by that act, and that the use of certificate was limited by it to the certificate by the courts below, after final judgment, of questions made as to their own jurisdiction, and to the certificate by the Circuit Courts of Appeals of questions of law in relation to which the advice of this court was sought as therein provided. We there held that the act of March 3, 1891, covered the whole subject-matter, and furnished the exclusive rule in respect of appellate jurisdiction, on appeal, writ of error or certificate.

The bankruptcy act has made no change in this regard, and as this case has not gone to judgment, the certificate must be

Dismissed.